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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/085,396	02/28/2002	David B. Wallace	D4865-00004	8099

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DUANE MORRIS LLP
IP DEPARTMENT
30 SOUTH 17TH STREET
PHILADELPHIA, PA 19103-4196

EXAMINER	
HARTMAN JR, RONALD D	
ART UNIT	PAPER NUMBER
2121	

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/085,396	WALLACE, DAVID B.	
	Examiner	Art Unit	
	Ronald D. Hartman Jr.	2121	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 January 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *17-20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *17-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Once again, the Affidavit filed on 8/18/2005 under 37 CFR 1.131 has been considered but is ineffective to overcome the rejection over Mowery et al. It appears that the applicant is confused with regards to the point; therefore the Examiner will try once again to clarify his position to the applicant.

The evidence submitted is insufficient to establish a conception of the invention prior to the effective date of the of the Mowery et al. reference. While conception is the mental part of the inventive act, it must be capable of proof, such as by demonstrative evidence or by a complete disclosure to another. Conception is more than a vague idea of how to solve a problem. The requisite means themselves and their interaction must also be comprehended. See *Mergenthaler v. Scudder*, 1897 C.D. 724, 81 O.G. 1417 (D.C. Cir. 1897).

In the instant application, the applicant's first and only mention of automatically ordering materials and automatically directing a transport vehicle to deliver the materials is found in an Engineering Report dated April 13, 1998. Therefore, it would appear that the actual earliest conception of the invention did not occur until April 13, 1998, this date not being sufficient to overcome the rejection of Mowery et al. which relies on an effective filing date of April 23, 1996 for the rejection of the claimed invention.

Also, it is noted that the instant application is a CIP of U.S. Parent No. 6,366,829. Priority is not granted to this Patent, with regards to the instant claims since "automatically ordering and automatically directing a transport vehicle to deliver materials" were not specifically disclosed. The only mention of ordering and directing are with regards to the Abstract wherein a signal about the material quantity is automatically transmitted to a remote location, but there is no explicit

mention that the ordering of materials and/or the directing of transport vehicles occurs automatically in reference or response to this information. Therefore it could be reasonably assumed that both steps could occur through use of a human being making a telephone call to order more materials and dispatching vehicles to deliver materials to the site. If the applicant continues to assert that Priority should be granted to U.S. Patent No. 6,366,829, they are kindly asked to specifically point out where support for the aforementioned features reside. That being said, Mowery et al. is a Patent which issued on 11/9/1999 and since the earliest effective Priority date for the instant Application appears to be the filing date of the instant application, that being 2/28/2002, the Mowery et al. reference is representative of a 102(b) type reference and therefore any showing under 1.131 is not sufficient to overcome the rejection formed under Mowery et al. since the rejection using Mowery et al. forms a statutory bar.

Therefore, even if, for sake of argument, the applicant was able to overcome the rejections formed under Mowery et al., it would appear that the applicant would only be entitled to the April 13, 1998 date since this was the first time the Applicant has documented, through explicit evidence, the claimed invention. The applicant, in the Remarks/Arguments section makes many assertions to the contrary, but continuously fails to provide the Examiner with specific citations or suitable documentary evidence which support the allegations that the Examiner is incorrect in his findings.

The Examiner would also like to make mention of the Remarks on page 9 in which the applicant appears to assert that the claimed invention was sold and in use on or around 6/3/1996. Based on a cursory review of these statements, it appears that the applicant has readily attested to the system being "in public use or on sale" more than one year prior to the filing of the instant application. The Applicant is kindly asked to submit any and all documentation relating to this

meeting that allegedly occurred on the week of 6/3/1996. Further, the applicant is kindly asked to submit any and all materials related to the verbal disclosure of 4/23/1996.

Once again, to reiterate, the applicant has not provided any documentary evidence which supports the assertion that the applicant is entitled to receive a priority date earlier than 4/13/1998 and even more importantly, the applicant's 1.131 submissions are not relevant to the rejections formed under Mowery et al. since, for the reasons already mentioned above, the application of Mowery et al. forms a statutory bar that may not be overcome through any showing under 37 CFR 1.131.

Therefore, since no claims have been amended, and the Remarks are found to be unpersuasive for the aforementioned reasons, the previous grounds of rejection are applied equally herein, and this action is being made FINAL.

Claim Rejections - 35 USC § 103 (maintained)

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 17 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mowery et al., U.S. Patent No. 5,983,198, in view of Schliefer et al., U.S. Patent No. 4,615,351.

As per claims 17 and 20, Mowery et al teaches a method comprising:

- generating a first signal representative of an existing bulk material quantity at a remote site (e.g. generation of "quantity signals" outputted from sensors which are fitted to the storage containers; Figure 1);
- transmitting a second signal corresponding to the first signal from the remote site to at least one computer at predetermined time intervals (e.g. transmitting a "level signal" from the RTU to the central station; Figure 1);
- determining the existing bulk material quantity and projected material usage rate for the existing bulk material quantity based on the transmitted signals (e.g. Figure 2 elements 206, 208 and 210; C4 L14-20 and C4 L33-45);
- ordering additional bulk materials from a pre-selected vendor based on the existing material quantity and the projected material usage rate (e.g. an order being placed to a shipping terminal; Figure 1);
- providing a transport vehicle to deliver the additional bulk material from the vendor to the manufacturing site (e.g. Figure 1, elements 118 and 102); and
- transporting the additional bulk material from the vendor to the site, whereby additional bulk material is supplied to the site before the existing bulk material is depleted (e.g. C3 L44-50 and C4 L26-32).

As per claims 17 and 20, Mowery et al. does not specifically teach a dry bulk material being monitored.

Schliefer et al. teaches a method of monitoring the surface level of a material in a vessel, wherein the material is in a dry form (e.g. Figure 2; "bulk solid").

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the teachings of Schliefer into the system disclosed by Mowery et al for the purpose of allowing Mowery's system to

be utilized in a manufacturing site which uses dry materials stored in bulk so that the level of the materials may be known at any point in time, including the future, so that the material quantity can be effectively maintained, monitored and controlled, and this would have been obvious to one of ordinary skill in the art at the time the invention was made.

As per claim 20, Mowery et al. further teaches the use of ultrasonic level detectors (e.g. C3 L51-53).

As per claims 17 and 20, automatically ordering materials and automatically directing vehicles for shipping the ordered materials is adequately anticipated by the combined system of Mowery et al. (e.g. See Figure 1, elements 18 and 102, C3 L44-50 and C4 L26-32).

4. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mowery et al., U.S. Patent No. 5,983,198, in view of Schliefer et al., U.S. Patent No. 4,615,351, in further view of Graves et al., U.S. Statutory Invention registration No. H1743.

As per claim 18, Mowery's combined system does not specifically teach the central computer having a display for displaying existing material quantity and projected usage rates.

Graves et al. teaches the use of a display (e.g. Figure 1 element 114) for displaying existing quantity levels and projected usage (e.g. Figure 4, C6 L18-26 and C12 L45-51).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the teachings of Graves et al. into Mowery's combined system for the purpose of allowing an operator to graphically

see what the current material quantities are, in addition, to see what the projected usage is, so that an operator may make well informed decisions, such as ordering additional materials, so that the material levels may be replenished without hindering the performance of the manufacturing site, and this would have been obvious to one of ordinary skill in the art at the time the invention was made.

5. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mowery et al., U.S. Patent No. 5,983,198, in view of Schliefer et al., U.S. Patent No. 4,615,351, in further view of Graves et al., U.S. Statutory Invention registration No. H1743.

As per claim 19, the rejection of claim 17 is equally applied herein.

As per claim 19, Mowery's combined system does not specifically teach producing an audible or visual alarm, via the central computer, when the material level falls below a predetermined level.

Graves et al. teaches a control room alarm box for use in issuing visual or audible alarms when levels in storage fall below a predetermined level (e.g. C9 L30-49 and C11 L37-52).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the teachings of Graves et al. into Mowery's combined system for the purpose of providing an indication when quantity levels fall below a predetermined level so that the levels may be replenished without hindering the performance of the manufacturing site, and this would have been obvious to one of ordinary skill in the art at the time the invention was made.

Conclusion

6. This is an RCE (Request for Continued Examination) of applicant's earlier Application No. 10/085,396. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald D Hartman Jr. whose telephone number is (571) 272 - 3684. The examiner can normally be reached on Mon. - Fri., 11:30 am - 8:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Knight can be reached at (571) 272 - 3687. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information

for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ronald D Hartman Jr.
Patent Examiner
Art Unit 2121

RDH
March 16, 2006

Anthony Knight
Supervisory Patent Examiner
Group 3600